

JAMAICA

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MONA, KINGSTON, 7. JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 5/90

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN THE COMMISSIONER OF INCOME TAX APPELLANT
A N D LYNSON CHARLTON RESPONDENT

Herbert Hamilton and William Alder for Appellant
Enos Grant for Respondent

July 16, 1990 and April 9, 1992

ROWE P.:

After a very short period of argument, the appeal was allowed and the case remitted to the Revenue Court for a hearing on the merits.

The respondent was assessed to income tax by the appellant for the years 1983, 1984 and 1985. He disputed the validity of these assessments on various grounds and appealed to the Revenue Court by Notice of Appeal dated July 27, 1988. On August 26, 1988, the appellant filed its Statement of Case in the appeal. When the matter came on for hearing on December 12, 1989 the respondent who was the appellant before the Revenue Court took a preliminary objection to the jurisdiction of the Court to hear the appeal. He relied on the decision of this Court in Collector of Taxes v. Winston Lincoln, R.M. Misc. Appeal 2/86 in which judgment was delivered on February 5, 1986. The trial judge heard arguments as to the Court's jurisdiction to hear the appeal and concluded that the assessments were invalid and that the Court had no jurisdiction to entertain the appeal. He made no order as to costs.

The Commissioner appealed. Ground 1 complained that the learned trial judge erred in law in holding that he had no jurisdiction to entertain the appeal. Section 4(1) and the Schedule to the Judicature (Revenue Court) Act, empowers the Revenue Court to hear and determine any appeal brought pursuant to Section 76 of the Income Tax Act. This section provides that any person who has disputed his assessment by notice of objection under Section 75 and who is dissatisfied with the decision of the Commissioner thereon may appeal to the Revenue Court.

On the face of it therefore the proceedings were properly brought in the Revenue Court. In Paul Beswick v. The Queen, Privy Council Appeal No. 31/86, Lord Griffiths referred with approval to the dictum of Lord Reid in Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 A.C. 169 at 171 that the expression "no jurisdiction" should be confined to the narrow sense where a Magistrate has no power to enter upon a hearing, or lacks territorial jurisdiction, or the offence may be one over which he has no power and which must be tried by a higher Court. What Lord Reid did say was:

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word 'jurisdiction' has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question."

Lord Reid then went on to list a number of circumstances which would cause the decision of a tribunal which had jurisdiction to become a nullity.

This was a case in which the Revenue Court had to construe the effect of certain documents relied on by the appellant and at the end of the exercise to determine whether the assessments were valid or were a nullity.

It is clear to us that the questions raised in the appeal before the Revenue Court were within that Court's jurisdiction and that the appeal ought to have proceeded in the usual way. The challenge to the Court's jurisdiction was baseless and ought not to have been entertained.